MOTION FILED
JUN 3 1998

(3)

No. 97-1779

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

ALAN RICHARDS, ET AL.,
JOHN R. NORTON, III, ET AL.,
Petitioners,

V.

LLOYD'S OF LONDON
AN UNICORPORATED ASSOCIATION, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC. AMICUS CURIAE

Karen M. O'Brien
General Counsel
Counsel of Record

Daniel S. Kahl
Associate Counsel

North American Securities
Administrators Association,
Inc.
10 G Street NE, Suite 710
Washington, DC 20002
(202) 737-0900

22 pp

No. 97-1779

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

ALAN RICHARDS, ET AL.,
JOHN R. NORTON, III, ET AL.,

Petitioners,

V.

LLOYD'S OF LONDON
AN UNICORPORATED ASSOCIATION, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

AUTHORITY TO FILE

Request for permission to file an amicus curiae brief was solicited from the Petitioners and the Respondents. Petitioners granted permission, Respondents indicated they do not oppose the filing of the brief.

The North American Securities Administrators Association, Inc. ("NASAA") is the organization having as its members the securities regulators of the fifty states, the District of Columbia, Puerto Rico, the Canadian provinces and territories and the Republic of Mexico ("Members"). NASAA through its undersigned counsel, moves this Court pursuant to Rule 37 for leave permitting NASAA to file a brief as amicus curiae in the above-referenced petition for writ of certiorari.

NASAA has an interest in this appeal for several reasons. First, all but a few states have residents that invested in Lloyd's of London ("Names"), some of whom are Petitioners. Second, those same states participated in a national agreement in an effort to resolve claims by the Names. In addition, several states brought enforcement actions against the Respondents. Third, if certiorari is granted, this Court would be interpreting provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 that are virtually identical to a provision contained in the Uniform Securities Act, upon which state securities acts are modeled. Finally, the interpretation of the provisions could potentially have a deleterious effect on the ability of state securities regulators to protect their citizens.

NASAA asserts that it is desirable for the Court to grant this motion for two primary reasons. First, NASAA is in the unique position as a member organization encompassing all the state securities regulators to inform the Court of the potential impact on state securities regulators' efforts to protect investors. Additionally, any interpretive position taken by this Court on the provisions will establish precedent that most likely will be followed by state courts.

NASAA respectfully requests that it be granted leave to appear as amicus curiae and be permitted to submit a brief for the Court's consideration on the Petition for Writ of Certiorari.

Dated this 3rd day of June, 1998.

KAREN M. O'BRIEN
General Counsel
North American Securities
Administrators Association, Inc.
10 G Street, N.E., Suite 710
Washington, D.C. 20002
(202) 737-0900

QUESTION PRESENTED

Whether provisions, included by Congress in two separate federal securities statutes, rendering void any agreement to waive compliance with those laws ("antiwaiver provisions") can be dismissed by a United States court based on a public policy determination that a contractual choice of law provision compelling the application of a foreign law provides for similar, but not identical, substantive rights as the federal statutes.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iii

STATEMENT OF INTEREST OF AMICUS CURIAE.....1

SUMMARY OF THE ARGUMENT.....3

ARGUMENT.....3

I. THE PUBLIC POLICY INTENT OF CONGRESS IS CLEAR AND EMBODIED IN THE UNAMBIGUOUSLY DRAFTED ANTIWAIVER PROVISIONS.....4

II. THE COURTS WRONGFULLY ESTABLISHED AN ALTERNATIVE STANDARD.....7

III. CONGRESS IS THE APPROPRIATE BRANCH OF GOVERNMENT TO AMEND FEDERAL STATUTES AND TO PERMIT THE RECOGNITION OF FOREIGN LAWS.....9

IV. THE FEDERAL AGENCY RESPONSIBLE FOR FEDERAL SECURITIES LAWS HAS RECOGNIZED, IN PART, ONLY ONE OTHER COUNTRY'S LAWS AS SIMILAR, AND IT IS NOT THE LAW OF ENGLAND.....10

CONCLUSION.....12

TABLE OF AUTHORITIES

CASES **Page(s)**

Rodriguez de Quijas v. Shearson/American Express, Inc.,
490 U.S. 477 (1989) 8

Scherk v. Alberto-Culver Co.,
417 U.S. 506 (1974) 8

Shearson/American Express, Inc. v. McMahon,
482 U.S. 220 (1987) 8

Wilco v. Swan,
346 U.S. 427 (1953) 8

STATUTES

Securities Act of 1933

Section 14, 15 U.S.C. 77n 5
Section 19, 15 U.S.C. 77s 10

Securities Exchange Act of 1934

Section 29(a), 15 U.S.C. 78cc(a) 6

Uniform Securities Act of 1956

Section 410 6
Section 414 4
Section 420 4

LEGISLATIVE MATERIALS

Pub. L. No. 104-290 7

104 CONG. REC. S12094 7

H.R. Doc. No. 103-159 9

H.R. Doc. No. 103-316 9

104th Cong., 1st Sess. 20 5,9

S. Rep. No. 73-47 4

H.R. Rep. No. 73-85 4

MISCELLANEOUS

Brief of Amicus Curiae Securities and Exchange Commission, Richards v. Lloyd's of London (9th Cir.) 12

COSRA Principles 9

Darrell Hall, Note, No Way Out: An Argument Against Permitting Parties to Opt Out of U.S. Securities Laws in International Transactions, 97 Colum. L. Rev. 57 (1997) 8

NASAA Resolution on Multijurisdictional Disclosure System ...11

New York Stock Exchange Web Site 5

Report on the Implementation of IOSCO Resolutions 9

Securities and Exchange Commission Releases

Securities Act Release No. 6568 11
Securities Act Release No. 6841 11
Securities Act Release No. 6902 11

STATEMENT OF INTEREST OF AMICUS CURIAE

In the United States, the offer and sale of securities are jointly regulated by the states and the Securities and Exchange Commission ("SEC"). The North American Securities Administrators Association, Inc. ("NASAA") serves as the forum where its members, the securities regulators of the fifty states, the District of Columbia, Puerto Rico, the Canadian provinces and territories and the Republic of Mexico ("Members"), work together to protect investors at the grassroots level against securities fraud and abuse and to promote fair and open capital markets. NASAA speaks as the collective voice for its Members in advancing those interests.

The principal interest of NASAA in the present case is to urge the Court to unconditionally uphold the enforceability of the antiwaiver provisions Congress purposefully placed in the Securities Act of 1933 (the "1933 Act") and the Securities Exchange Act of 1934 (the "1934 Act") approximately sixty-five years ago. If the enforceability of these provisions is allowed to be compromised, the application of a virtually identical antiwaiver provision contained in the Uniform Securities Act of 1956 (the "Uniform Act"), upon which individual state securities acts are modeled, could also be questioned. By allowing the U.S. securities laws to be negated in this manner (in direct contrast to Congressional and state legislative intent), U.S. investors will be relegated to "caveat emptor" status despite carefully crafted and time-tested federal and state securities laws to protect U.S. investors.

Even with the combined resources of the state and federal securities regulators, the burgeoning U.S. securities markets are a constant challenge to oversee. Congress, as well as state legislatures, had the foresight to recognize that fact and included private rights of action within the securities laws to assist in the

[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than the Amicus Curiae, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

enforcement of such laws. The enforceability of the antiwaiver provisions is critical to the complementary enforcement efforts of U.S. investors and U.S. regulators to uphold the rights afforded by the federal securities laws.

In addition, the antiwaiver provisions serve not only to maintain the relevance of the U.S. securities laws for individual U.S. investors, but also to protect the integrity of the U.S. securities markets as a whole. NASAA is concerned that questioning the enforceability of the antiwaiver provisions in private actions could result in jeopardizing law enforcement efforts.

Finally, as an advocate for the small, unsophisticated investor, NASAA is cognizant that small investors do not have strong bargaining power. As a result, they may be aggressively solicited to invest in a securities transaction, only to succumb to pressures to waive their protections under the U.S. securities laws as a prerequisite to investing, and then, discover they have purchased worthless securities with no recourse against the seller. With the increasing attractiveness and ease of investing overseas brought about by new economic opportunities and the continuing advancements in telecommunications, U.S. investors will become targets of such schemes.

NASAA is filing this brief to urge the Court to allow Congress to make the determination, as it previously did, whether the antiwaiver provisions are necessary to maintain the protections of the federal securities laws. In addition, in light of the increasingly global economic society of today, Congress may choose to look at the viability of the provisions as well. If these provisions are now bad law, the lawmakers should change them, not the courts.

SUMMARY OF THE ARGUMENT

The Court need not look beyond the clear language of the antiwaiver provisions to determine the question presented. Nor should the Court feel compelled to interpret the language of the provisions so broadly as to turn the provisions upside down to resolve issues of public policy. Congress is the appropriate branch of government to revise federal statutory language to accommodate changes in the market place since first included in the federal acts. Whether creating new laws or revising old laws into new, the approach must be the same - a deliberative process to consider all relevant issues and factors.

The rights and obligations of the securities laws represent a delicate balance between the promotion of capital formation, critical to the continued prosperity of the U.S. economy, and the protection of investors, without whom there would be no capital formation. The substantive laws regulating the U.S. securities markets represent almost three quarters of a century of such careful balancing by both Congress and regulatory agencies at the federal and state level. The circuit courts' substitution of foreign laws for U.S. laws could have a devastating effect.

ARGUMENT

By upholding the choice of law provision contained in contracts between Lloyd's and the Petitioners, the district court effectively dismissed the antiwaiver provisions contained in the federal securities acts. Subsequently, the Court of Appeals for the Ninth Circuit, sitting en banc in this case, affirmed the district court's ruling citing to the "international" nature of the agreements between private parties as a rationale for discounting a federal statute directly to the contrary.

I. THE PUBLIC POLICY INTENT OF CONGRESS IS CLEAR AND EMBODIED IN THE UNAMBIGUOUSLY DRAFTED ANTIWAIVER PROVISIONS.

The federal securities laws were put into place as a result of widespread practices of fraud and deceit in investment offerings.[1] Although states had securities laws, those who committed fraud in the early 1900's practiced their frauds across state lines, which made it difficult for states to exercise their jurisdiction.[2] Recognizing the need for a national law to assist state securities laws in the promotion of fair capital markets, the federal securities laws were enacted.[3] Significant consideration should be given to the fact that the antiwaiver provisions were included in the first two federal securities acts enacted by Congress. Their inclusion likely was an attempt by Congress to prevent the securities markets from backsliding into the fraudulent practices of the past by simple avoidance of the new laws through the waiver of their application.

The continued expansion of the U.S. securities markets is a testament to the fact that participating investors around the world

---

[1] *See* S. Rep. No. 73-47, at 2 ("The necessity for the [Securities Act] arises out of the fact that billions of dollars have been invested in practically worthless securities. . . by the American public through incomplete, careless, or false representations. The result is dire national distress."); H.R. Rep. No. 73-85, at 2 ("The flotation of. . . essentially fraudulent securities was made possible because of the complete abandonment by many underwriters and dealers in securities of those standards of fair, honest, and prudent dealing that should be basic to the encouragement of investment in any enterprise.").

[2] UNIF. SEC. ACT §§ 414, 420 (1956), NASAA Reports (CCH) ¶¶ 4930, 4932 (July 1997).

[3] *See* S. Rep. No. 73-47, at 2 ("It is now imperative that the Federal Government shall adopt measures looking to the protection of the purchasers of securities in interstate commerce."); H.R. Rep. No. 73-85, at 3 (indicating that the status quo "can no longer be tolerated").

recognize the integrity, openness, and expansive opportunities presented by the U.S. markets.[4] This confidence in the U.S. markets has occurred not by happenstance, but rather by effective securities statutes and rules at the federal and state level that are enforced against those who would otherwise not choose to voluntarily comply. Enforcement of such statutes and rules by federal and state regulators is not enough. Private actions to right such wrongs are a necessary supplement to the otherwise limited governmental resources. The antiwaiver provisions provide U.S. investors with the ability to enforce the U.S. securities laws that have established the fair and open capital markets that the ever-expanding investing community now enjoys.

The wording of the antiwaiver provisions in the federal securities acts is as follows:

Section 14 of the 1933 Act reads:

> Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission shall be void.[5]

The parallel provision in Section 29(a) of the 1934 Act reads:

---

[4] *See* Capital Markets Deregulation and Liberalization Act of 1995, Hearings on H.R. 2131 Before the Sub. Comm. on Commerce, 104th Cong., 1st Sess. 20 (1995) (statement of J. Carter Beese, Jr.)("In 1980, foreign purchases and sales of U.S. securities together amounted to slightly over $75 billion. Fourteen years later, in 1994, that figure tipped $700 billion. . . . Since 1984, the volume of foreign trading in U.S. securities has risen at a compound annual rate of 18.95 percent, while the York Stock Exchange volume has grown 12.34 percent annually."), *quoted in* U.S. Treasury Bulletin and New York Stock Exchange Fact Book (1994); http://www.nyse.com/public/market/2c/2c6fm.htm (visited June 2, 1998)(NYSE Reported Share Volume Records, 1997-133,312,115,000).

[5] 15 U.S.C. §77n (1997).

> Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of an exchange required thereby shall be void.[6]

The Uniform Act antiwaiver provision included in state securities statutes reads as follows:

> Any condition, stipulation, provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.[7]

The inclusion of this wording in all three of these securities acts demands that the purpose of these provisions not be discounted or rendered irrelevant, even in a case with difficult facts as before the Court today. The flaw in the Ninth Circuit's interpretation of the antiwaiver provisions would be more readily apparent if the agreement between the parties had been to waive any rights against fraudulent actions rather than to agree to a choice of law provision. The need to preserve investor rights against fraudulent actions is easily understood. Protection against a voluntary choice of law provision generally, however, is less obvious because it is dependent upon the substantive rights of the laws of the selected jurisdiction.

Choice of law provisions are routinely used by contracting parties and given full force and effect. To uphold the antiwaiver provisions would have required the Ninth Circuit to void an allegedly voluntary contractual provision between two parties and to dismiss the application of a foreign law from a country with a longer, more established history than the United States. However,

---

[6] 15 U.S.C. §78cc(a)(1997).

[7] UNIF. SEC ACT §410(a) (1956), NASAA Reports (CCH) ¶4890 (July 1997).

none of these factors are relevant.

The clear language of the antiwaiver provisions is irreconcilable with the ability of the courts to give effect to the choice of law provision. Recently, Congress reviewed and revised the federal securities laws in a comprehensive manner for the first time since their enactment.[8] At that time, Congress recognized not only the national nature of the U.S. securities markets, but the internationalization of the securities markets generally.[9] It should be noted that Congress did not take that opportunity to void or amend the antiwaiver provisions.

II. THE COURTS WRONGFULLY ESTABLISHED AN ALTERNATIVE STANDARD.

Despite the unambiguous language of the antiwaiver provisions, in all five of the previous Lloyd's of London cases considered at the circuit court level, the courts applied similar versions of an alternative test permitting the waiver of substantive rights under the federal securities acts. The alternative test is the result of the circuit courts' wrongful extension of the decisions by this Court in a series of pre-dispute arbitration cases, coupled with a court-established public policy test that overrides the presumed validity given to choice of law provisions.

---

[8] National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (1996).

[9] 104 CONG. REC. S12094 (daily ed. Oct. 1, 1996)(statement of Sen. Dodd)("The American capital markets are the envy of the world. No other Nation enjoys the international reputation of our capital markets and it is necessary for Congress periodically to review and modernize, where necessary, the laws that make our markets and our financial services industry the world's leader."); (statement of Sen. D'Amato)("The National Securities Markets Improvement Act of 1996 is a significant piece of legislation that will ensure that the U.S. securities market remains the pre-eminent securities market in the world. . . . The bill will make U.S. broker-dealers more competitive in the global markets. . . . This bill will make the securities laws reflect the reality of today's marketplace.").

In a series of four cases relating to agreements requiring the arbitration of securities disputes, this Court was forced to evaluate the public policy issues surrounding the antiwaiver provisions in the federal securities laws.[10] The context for those cases, however, was the dichotomy between mandatory arbitration clauses, operating as forum selection clauses in the context of "international" agreements, and the unyielding antiwaiver provisions. Upon a careful analysis of those cases, it is apparent that this Court issued its decisions after taking into careful consideration a developing federal policy favoring arbitration through the adoption of federal legislation, the creation of an international forum for arbitration, and the continued application, and protection of federal substantive rights.[11]

The extension of the line of reasoning supporting the narrow carve out relating to forum selection clauses under the arbitration cases to a broad choice of law provision is misguided and without even inferential support from Congress or the international community. No federal policy favoring the application of foreign substantive securities laws in transactions with U.S. investors has developed. Rather, Congress, as well as the SEC, continues to carefully evaluate the interrelationship of U.S. and foreign securities laws and only very limited recognition of foreign securities laws has become policy, as will be discussed below. Moreover, only limited, generalized non-binding international guidelines for securities transactions have been

---

[10] *See* Rodriquez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477 (1989); Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987); Scherk v. Alberto-Culver Co., 417 U.S. 506 (1974); Wilko v. Swan, 346 U.S. 427 (1953), overruled by Rodriquez de Quijas, 490 U.S. 477 (1989).

[11] *See* Darrell Hall, Note, No Way Out: An Argument Against Permitting Parties to Opt Out of U.S. Securities Laws in International Transactions, 97 Colum. L. Rev. 57 (1997).

promoted by voluntary international securities organizations.[12] Thus, any extension of the carve-out from the antiwaiver provisions for forum selection clauses to include choice of law clauses is unwarranted and without Congressional guidance.

III. CONGRESS IS THE APPROPRIATE BRANCH OF GOVERNMENT TO AMEND FEDERAL STATUTES AND TO PERMIT THE RECOGNITION OF FOREIGN LAWS.

As previously mentioned, Congress recently reexamined the federal securities acts and passed a bill containing revisions to acknowledge changes in the marketplace.[13] Congress did not amend or diminish the antiwaiver provisions.

Another manner in which Congress can facilitate the recognition of foreign laws is through treaties. Congress endorsed the North American Free Trade Agreement ("NAFTA"), as well as authorizing the continued rounds of negotiations on the General Agreement on Tariffs and Trade ("GATT").[14]

The general purpose of both NAFTA and GATT is to eliminate discrimination of foreign persons and entities in certain areas relating to cross-border trade and services by granting them the same treatment as domestic persons and entities ("national treatment"). The process by which the treaties are implemented

---

[12] *See* Report on the Implementation of IOSCO Resolutions, Int'l. Organ. of Sec. Comm. (July 29, 1996); COSRA Principles, Council of Sec. Regul. of the Americas (2d. ed. 1996).

[13] Capital Markets Deregulation and Liberalization Act of 1995, *supra* p.5.

[14] The North American Free Trade Agreement, H.R. Doc. No. 103-159, 103d Cong. 1st Sess. (1993); General Agreement on Tariffs and Trade, H.R. Doc. No. 103-316, 103d Cong. 2nd Sess. (1994).

permits broad deference to local laws.

For example, under both NAFTA and GATT the federal and state securities regulators identified various statutory provisions, rules and regulations that were "reserved" from compliance with the requirements of the treaties establishing equal treatment across jurisdictional borders. The reservations were identified because they reflected rights and obligations under the U.S. securities laws that are prudential in nature and central to the purpose of the federal and state securities acts. Essentially, the federal and state regulators indicated to Congress, as well as the other countries that are parties to the treaties, that the provisions that were reserved are different than the standards of the other countries, but crucial to U.S. securities markets.

The antiwaiver provisions should be given the same deference. Congress should, if necessary, evaluate their continued purpose and focus.

IV. THE FEDERAL AGENCY RESPONSIBLE FOR FEDERAL SECURITIES LAWS HAS RECOGNIZED, IN PART, ONLY ONE OTHER COUNTRY'S LAWS AS SIMILAR AND IT IS NOT THE LAW OF ENGLAND.

Section 19(a) of the 1933 Act grants the SEC the authority ". . . from time to time to make, amend, and rescind such rules and regulations governing the registration statements and prospectuses for various classes of securities and issuers. . . "[15] Pursuant to this authority, in February of 1985, the SEC issued a concept release to solicit comment on a possible rulemaking initiative intended to facilitate cross-border offerings of securities by specified issuers

---

[15] 15 U.S.C. § 77s(a)(1997).

that met certain tests.[16]

This concept, entitled the Multijurisdictional Disclosure System, was undertaken by the SEC to "remove unnecessary impediments to transnational capital formation without unduly disadvantaging U.S. issuers in the U.S. markets, while ensuring that those buying securities in the U.S. markets are afforded the protections intended by the Securities Act and the Exchange Act."[17] The staff of the SEC thereafter began discussions with the staffs of the Ontario and Quebec securities commissions. Discussions with these Canadian provisions was stated as an obvious starting point based upon Canada's "mature capital markets with a strong regulatory tradition."[18]

The states, through NASAA, formed a special task force to work with the SEC and the provinces of Ontario and Quebec to determine what accommodations would be appropriate at the state level to facilitate use of the Multijurisdictional Disclosure system. The rules permitting the Multijurisdictional Disclosure System were adopted by the SEC in 1991.[19] The NASAA members adopted a resolution in September of 1989 supporting the new effort.[20]

Subsequent to the adoption of the new rules, the SEC had discussions with a few additional countries, but to no avail.

---

[16] Facilitation of Multinational Securities Offerings, Securities Act Release No. 6568, Fed. Sec. L. Rep. (CCH)¶83,743 (March 1985).

[17] Proposed Rules, Securities Act Release No. 6841, Fed. Sec. L. Rep. (CCH)¶84,432, at p. 80,282 (Aug. 1989), revised proposal ¶84,701(Nov. 1990).

[18] *Id.*

[19] Adoption of Proposed Rules, Securities Act Release No. 6902, Fed. Sec. L.Rep. (CCH) ¶ 84,812 (July 1991).

[20] NASAA Resolution Multijurisdictional Disclosure System Proposed by the U.S. Securities and Exchange Commission, NASAA Reports (CCH) ¶ 7030A (Jan. 1993).

Similarities between those other countries securities laws were not significant enough to warrant consideration of extending the program.

The fact that the Multijuridsictional Disclosure System was not extended to England bolsters the SEC's argument in its amicus brief in the Ninth Circuit that English laws are not the substantive equivalent of U.S. securities laws as suggested by the circuit courts.[21] Moreover, it is clear from the SEC's rationale for pursuing the multijurisdictional system with the two specified Canadian provinces that, although reducing unnecessary impediments to capital formation efforts is important, such systems cannot begin without assuring that U.S. investors are afforded the protections intended by the federal acts.

CONCLUSION

The circuit courts have wrongfully applied a court substituted standard for a Congressional mandate. The antiwaiver provisions of both the federal and state securities laws were included purposefully and without compromise for strong public policy reasons that are even more important to the economic welfare of the U.S. today. With more and more small and unsophisticated investors relying upon the securities markets as another method to save for their future retirement or family needs, it is imperative to maintain the protections available under the U. S. securities laws. In addition, with the increasing use of Internet technology to communicate with persons on U.S. soil from locations far away, U.S. investors need the assurance that their rights under the U.S. securities laws that make the securities markets so attractive in the first place will be upheld. If the

---

[21] Brief of The Securities and Exchange Commission, Amicus Curiae, Richards v. Lloyd's of London, Nos. 95-55747, 95-56467 (9th Cir. May 5, 1996).

absolute application of these provisions is no longer appropriate due to the internationalization of the securities markets, Congress and the states, (or if within the delegated authority to the federal and state agencies that administer the securities laws, the SEC and state securities regulators), should revise the antiwaiver provisions accordingly. Until such time, the provisions stand and must be upheld as unambiguously as drafted.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

KAREN M. O'BRIEN
General Counsel
North American Securities
Administrators Association, Inc.
10 G Street, N.E., Suite 710
Washington, D.C. 20002
(202) 737-0900

June 3, 1998